UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

July 11, 2017

VIA ELECTRONIC AND FIRST CLASS MAIL
Thomas E. Knauer, Esquire
Law Office of Thomas E. Knauer, PLLC
12101 Country Hills Court
Glen Allen, Virginia 23059

Re: United State and Commonwealth of Virginia v. AdvanSix Resins & Chemicals LLC

Dear Mr. Knauer:

The United States Environmental Protection Agency, Region III (EPA or Agency) has reviewed the January 15, 2017 response of AdvanSix Resins & Chemicals LLC (AdvanSix) to EPA's letter of December 2, 2016. Although EPA's letter of December 2 references the assessment of potential stipulated penalties for violations under the July 18, 2013 Consent Decree, viz., *United States and Commonwealth of Virginia v. Honeywell Resins & Chemicals LLC* [Civil Action No. 3:13CV193] (the Consent Decree), AdvanSix has represented to the Agency that Honeywell's corporate name change as a result of a "spin-off" did not alter any of its obligations as set forth under the Consent Decree, and that AdvanSix will continue to meet those obligations as owner/operator of the Hopewell manufacturing plant, located at 905 East Randolph Road, Hopewell, Virginia 23860 (the Facility)[1]. Thus, EPA will hereinafter refer to AdvanSix as the party responsible for the fulfillment of all obligations, including the immediate issue of stipulated penalties, under the terms and conditions of the Consent Decree.

With regard to your initial conclusion that EPA's assessment of AdvanSix's compliance history or commitment to compliance with the Consent Decree was not "fair or accurate", let me emphasize that EPA's assessment of the company's history of compliance with regard to the Enhanced Leak Detection and Repair Program under Section VIII, Appendix A (the ELP Program) of the Consent Decree was based, as a practical matter, on the Agency's receipt of at least six (6) Disclosures of Potential Consent Decree Violations (the Disclosures). In fact, the Agency's underlying purpose in meeting with AdvanSix back on October 7, 2015 was to discuss, and have the company directly address, what effectively had become a continuing series of Disclosures related to AdvanSix's apparent noncompliance with the ELP provisions under the Consent Decree. Our subsequent letter of December 2, 2016 sought to summarize the information contained in each of those Disclosures and provided a basis for our assessment of the Company's compliance history related to Section VII Paragraph 21 of the Consent Decree, as well as the ELP provisions set forth in Appendix A of the Consent Decree.

[1] In August of 2016, EPA received Honeywell's Notification of Intention to spin-off Honeywell Resins and Chemicals LLC. (the "Notification"). The Notification specifically indicated that "[t]he spin-off will affect the consent decree only to the extent of [Honeywell's] name change and the change in certain contact persons in paragraph 94, since [Honeywell] will continue to own the Hopewell Plant and operate it just as it did prior to the spin-off...[Honeywell] and the future AdvanSix Resins and Chemicals LLC will continue to meet the obligations of the consent decree."

Notwithstanding the company's implementation of "corrective and preventative actions" which reportedly were undertaken in response to the Disclosures, EPA candidly made it clear during the October 7 meeting that a substantial stipulated penalty would likely be assessed in connection with these violations. As we move towards our final assessment of stipulated penalties, however, EPA sees no reason why evidence establishing that the company did, in fact, undertake a "prompt and [effective response] to issues that arose", and that "[t]here have been no additional violations of the ELP discovered since the October 7, 2015 meeting..." would not redound to the company's benefit as the parties seek resolution of this matter. Nevertheless, EPA continues to believe that its characterization of AdvanSix's history of compliance, as it relates to the company's obligations under the Consent Decree, was a fair assessment in light of the repeated Disclosures it received. And although AdvanSix's Disclosure notice letters may not have identified any excess emissions associated with those instances of apparent noncompliance, EPA strongly disagrees that they were merely "administrative in nature". EPA did not offer any assessment of the company's overall "commitment to compliance". Our concern is limited to AdvanSix's obligation to maintain continuous compliance with the terms and conditions of the Consent Decree.

Violations

As we previously indicated in our letter of December 2, 2016, pursuant to Paragraph 49.b of the Consent Decree, AdvanSix notified EPA that it had reason to believe that it may have violated or failed to comply with certain requirements of the Consent Decree found in Section VII, Paragraph 21, as well as violations of its ELP Program found in Appendix A of the Consent Decree, and identified each of those instances as a Disclosure. EPA will now address AdvanSix's January 15, 2017 response to the violations identified in the "Summary of Consent Decree Violations" chart (the Summary Chart) referenced in our letter of December 2, 2016:

Item No. 1 in EPA's Summary Chart refers to AdvanSix's Failure to Timely Replace Equipment as required under Part G of Appendix A. The specific parameter here relates to the company's failure to timely install/replace 104 Certified Low Leak Technology (CLLT) valves. Paragraph 58(f) of the Consent Decree subjects AdvanSix to potential stipulated penalties for this violation in the amount of "$3,000 per piece of LDAR covered equipment per day." In its letter of January 15, AdvanSix explains that "[t]he "underlying reason why non-CLLT valves were installed and appropriate corrective actions have been explained in detail in Honeywell's submittals and during the meeting with EPA on October 7, 2015." AdvanSix further offers, "[a]s a clarification, the total number of valves disclosed as potential CLLT violations should be 96 as opposed to the 104 stated in your letter and summary chart."

EPA will agree that an understanding of the underlying reason(s) or cause for noncompliance with Part G of Appendix A of the Consent Decree is appropriate for the establishment of corrective measures. However, this explanation alone cannot serve as a basis to extinguish the entire violation and resulting stipulated penalty itself. EPA accepts AdvanSix's clarification/correction with regard to the actual number of CLLT valves (96) in violation of Paragraph 58(f) of the Consent Decree.

With regard to the requirements for equipment replacement under Part G of the Consent Decree and its application to potential stipulated penalties, this requirement would be triggered whenever AdvanSix either adds new CLLT valves, or removes such equipment if the CLLT valve is replacing an older valve, because that new piece of equipment is being added to the LDAR program. There is no express language in Paragraph 58(f) that supports the claim that this provision does not apply to new valves installed as replacement equipment.

AdvanSix's Disclosure that it failed to timely replace equipment (CLLT valves) falls squarely within the scope of Part G of Appendix A, identified as "Equipment Replacement". The requirements of Paragraphs 19(c) and (d) of Appendix A do not apply here. Those provisions apply first to valves having a "screening value at or above 250 ppm", or "between 100 ppm and 250 ppm". We see no indication from AdvanSix's response that any of the valves meet these prerequisites. Moreover, EPA does not agree with what appears to be AdvanSix's addition of a threshold requirement for purposes of Paragraph 58(f), i.e., that the assessment of stipulated penalties pursuant that paragraph ONLY applies where the valves have a "significant leak potential", vs. valves without such potential. The leak potential—whether significant or low—is not a factor or trigger under Paragraph 58. In our view, the provisions of Paragraph 58(f) which subject AdvanSix to potential stipulated penalties are broadly focused on the replacement of "equipment" (as required under Part G of Appendix A), without regard to whether that equipment is new or existing.

EPA is also still not persuaded that the certification of CLLT "Powell Valves" provided by AdvanSix in its letter of October 21, 2015 confirms that the valves installed at the Facility in 2014 were CLLT at the time that they were initially installed. Despite the certification contained in Attachment 2 to the October 21 correspondence (which covers "...both the time of the initial installation of the valves in 2014 and upon re-torquing."), EPA continues to believe that under the Consent Decree, CLLT valves are required to be installed where any new valve is installed in a Covered Process Unit, and that these new replacement valves must be CLLT without the need for any additional re-torquing of the valves to the manufacturer's specifications.

Attachment 6 to the October 21, 2015 letter references Powell's review of the effectiveness of the actions taken by AdvanSix relative to Powell valves installed in areas of the Facility in 2014, where AdvanSix "installed several standard Powell, figure 2456, class 150, stainless steel gate valves with Teflon stem packing at various times in 2014 in areas of the plant where CLLT is required". In EPA's view, Powell's response to Phil Sparks in its October 15, 2015 letter concerning the effectiveness of actions taken by AdvanSix to ensure that Powell gate valves installed in 2014 meet the CLLT criteria as required under the Consent Decree, appears to indicate that the valves installed at the Facility in 2014 meet the required certification for CLLT only if certain steps were first taken:

> *"Upon Honeywell's investigation into the CLLT documentation for these valves in March of 2015, Powell indicated that these standard valves meet the CLLT requirements **if** the packing nuts are tightened to the Powell torque specification." (emphasis added)*
>
> *"In order to ensure the valves would perform as CLLT, Honeywell contracted with The Colt Group ("Colt") to torque the packing nuts on these valves to the Powell supplied torque specification while the process was in operation. There may have been a period of up to a year between the initial installation of some of these valves and the execution of the final torque procedure by Colt." (emphasis added)*

"After review of the information provided, Powell has no issues or concerns with the procedure used by Colt to restore the final torque of the packing nuts on these valves. Powell would expect this procedure to apply the proper pressure on the packing to seal the valve stem and prevent leaks. Furthermore, the valves are ***now*** *expected to perform in accordance with the CLLT certification statement made by Powell, including the long-term ability to meet the low emission level." (emphasis added)*

Item No. 2 in EPA's Summary Chart refers to AdvanSix's Failure to Comply with the Management of Change requirements related to CLLT Valves.

Appendix A, Part H of the Consent Decree (Management of Change) is intended to ensure that each piece of equipment added to the Facility for any reason is evaluated to determine if it is or was subject to LDAR requirements, that such pieces of equipment are integrated into the LDAR program, and that pieces of equipment that are taken out of service are removed from the LDAR program. Where AdvanSix fails to incorporate equipment changes in accordance with the Facility-Wide Management of Change protocol in accordance with Part H of Appendix A, AdvanSix may be subjected to potential stipulated penalties in the amount of $10,000 per violation per month of noncompliance under Paragraph 58(g) of the Consent Decree. AdvanSix's Disclosure that the company installed new valves that were not CLLT when installed falls within the ambit of the Management of Change protocol under Part H of Appendix A. AdvanSix's failure to comply with Management of Change requirements under Appendix A, Part H of the Consent Decree relates to the timeliness of its failure, because monitoring of the valves should have first occurred at least in 2015. "AdvanSix does not dispute that its failure to install valves with CLLT might be viewed as a 'failure to incorporate equipment changes identified in the Facility-wide Management of Change Protocol in accordance with Part H of Appendix A."

Item No. 3 in EPA's Summary Chart refers to AdvanSix's Failure to Comply with the Management of Change requirements (Related to AdvanSix's Failure to Identify the Installation of 24 Valves/Components as part of a Capital Project)

AdvanSix's July 5, 2015 Disclosure identifies 24 additional LDAR components (valves) that were added as part of a capital project at the Facility. These components, however, were not added to AdvanSix's Facility-Wide LDAR Program for various timeframes, as reported across multiple deviation reports. This failure to properly identify the installation of 24 components was a violation of Part H Appendix A, subjecting AdvanSix to potential stipulated penalties in the amount of $10,000 per violation per month of noncompliance under Paragraph 58(g) of the Consent Decree. Although your January 15, 2017 letter indicates that "AdvanSix does not dispute that improperly identifying these valves might be viewed as a "failure to incorporate equipment changes identified in the Facility-wide Management of Change Protocol in accordance with Part H of Appendix A", the company explains that these 24 valves addressed in item No. 3 of the Summary Chart are already included in the count of 96 valves identified in potential violations under item No. 2. Because of this, the company believes it is unwarranted and unnecessary to assess them twice for the same stipulated penalty under the same provision for the same valves.

The assessment of stipulated penalties under Item No. 3 in EPA's Summary Chart is not an assessment of the 24 valves (installed as part of AdvanSix's capital project) twice, for the same violation. EPA's assessment was made for different reasons, and for different components, as provided for under the Consent Decree. The 24 valves referred to in EPA's Summary Chart were never identified by AdvanSix as part of the capital project when they were first installed. This, in our view, is not only a Management of Change violation, but also an indication that the 24 valves were never monitored, and never considered as part of AdvanSix's LDAR program until the third party audit discovered the valves. Additionally, the valves were required to be CLLT valves upon installation. Consequently, the 24 valves are not being counted twice for the same violation, but instead, there are two different issues: one where the valves were never identified and incorporated into the company's LDAR program; and secondly, when the valves were installed, they were not CLLT.

Item Nos. 4 and 5 in EPA's Summary Chart refers to AdvanSix's Failure to Timely Monitor

AdvanSix's July 6, 2015 and October 5, 2016 Disclosures identify two (2) valves that it failed to timely monitor in accordance with Appendix A, Part B (related to Monitoring Frequency), because the company monitored outside the required time frame for component monitoring. However, the company does not agree that the $100 per component per day stipulated penalty referred to in EPA's Summary Chart is applicable for this potential violation. AdvanSix states that Paragraph 58(b) only applies "…when the ELP monitoring frequency is missed and the ELP frequency is more stringent than the otherwise applicable federal, state or local laws or regulations."

The Consent Decree provides that AdvanSix must monitor the following Covered Equipment in accordance with Appendix A, Part B, using the following frequencies: (a) quarterly for valves; (b) annual for connectors; (c) monthly for pumps/agitators; and (d) annual for Open-Ended Lines (done at the closure device). EPA's Summary Chart identifies potential violations related to two (2) valves. Despite the company's explanation that the valves were incorrectly characterized, there is no dispute that the violation occurred and, in fact, corrective action was undertaken to address the violation. Under the terms of Appendix A, Part B, unless more frequent monitoring of Covered Equipment is required by federal, state or local laws or regulations, then AdvanSix must comply with the monitoring frequencies identified above. The need for more frequent monitoring under the terms of the Consent Decree depends upon the type of Covered Equipment involved. While we do not agree that it is limited only to "missed" monitoring and inspection events, EPA is willing to consider the need for stipulated penalties in this instance.

Item No. 6 in EPA's Summary Chart refers to AdvanSix's Stack Test Violations (Failure to Conduct Opacity Testing within 24 Months of the Effective Date of Consent Decree)

AdvanSix's September 14, 2015 Disclosure indicates that the company failed to conduct timely opacity testing in accordance with Section VII of the Consent Decree. Section VII, Paragraph 21 of the Consent Decree (Area 9 PM AND OPACITY TESTING AND MONITORING) provides that:

> Within twenty-four (24) months of the effective date of this Consent Decree, [AdvanSix] shall conduct particulate matter ("PM") and opacity performance testing…to determine compliance with the control efficiency and emission limit requirements established in the Title V Permit and

summarized in the table below …, and the opacity requirements established in Article 1 of 9 VAC 5 Chapter 40 of Virginia's regulations." (emphasis added)

Section XI of the Consent Decree (related to Permits) specifically provides that "[t]he requirements of this Consent Decree shall be incorporated into a new source review permit and the Title V Permit for the Facility in accordance with applicable Virginia New Source Review and Title V rules before the termination of the Consent Decree." AdvanSix "…does not dispute that the penalty stipulated in Paragraph 56(a) may be appropriate for this alleged violation", but nonetheless explains that "… the opacity test requirements of the Consent Decree were not transferred into the facility's Title V permit" and, as a consequence, "… the Company's use of this permit to develop the test protocol for the particulate testing resulted in the opacity test omission." Despite this apparent failure to comply with the specific terms and provisions of the Consent Decree, AdvanSix offers that it was in compliance with the opacity testing requirement in its permit.

First, EPA agrees that the correct "effective date" of the Consent Decree was July 18, 2013, and that 24 months from that date would be July 18, 2015. Secondly, the requirement to conduct timely opacity testing in accordance with Section VII of the Consent Decree was not dependent upon whether the opacity test requirements of the Consent Decree were transferred into the Facility's Title V permit. The Consent Decree is clear that the opacity testing should have been conducted within 24 months of the effective date of the Consent Decree, i.e., by July 18, 2015. EPA is aware that the Virginia Department of Environmental Quality (VADEQ) has also issued a Notice of Violation to AdvanSix in connection with the company's failure to conduct timely stack testing, in violation of the Consent Decree.

Item No. 7 in EPA's Summary Chart refers to AdvanSix's Management of Change Violations for 23 Open Ended Lines

AdvanSix's May 20, 2016 Corrective Action Plan (CAP) developed by its third-party LDAR audit contractor (Sage Environmental) identified twenty-three (23) open ended lines (OELs) during the audit.

The Summary Chart cited potential stipulated penalties in two different categories: In Item No. 7 of the Summary Chart, EPA cited 23 OELS (as referenced in AdvanSix's May 20 2016 CAP). In Item No. 8 of the Summary Chart, EPA also cited 48 Valves for failure to timely monitor. These same valves were misidentfied by AdvanSix as OELs. EPA did not cite the 48 valves as OELs.

OELs are "Covered Equipment", as that term is defined in Paragraph 1(c) of Appendix A of the Consent Decree. The ELP Management of Change requirements under Appendix A, Part H of the Consent Decree extend to OELs because they are also included as Covered Equipment. OELs in and of themselves are prohibited at all times and are a violation of the requirements and standards of performance under 40 C.F.R. Part 60, Subpart VV (§60.482-6); and 40 C.F.R. Part 63, Subpart H (§63.167). As a consequence, the Facility should never have OELs at any time. With regard to OELs identified during the third party audit, they too would have been considered Covered Equipment subject to the requirements under Appendix A, Part H of the Consent Decree. If, as AdvanSix claims, these were "existing valves and piping where a piping cap/plug had been removed and not replaced", it would appear that OEL violations occurred at the Facility for extended years. If the physical cap/ plug is removed at any point, we believe that the cap/plug was required to be documented and replaced as soon as possible, because it is Covered Equipment subject to the Management of Change provisions, and because of the prohibition against OELs under Subparts VV and H.

Item No. 8 in EPA's Summary Chart refers to AdvanSix's Failure to Timely Monitor (Monitoring Outside the Required Time Frame for Component Monitoring).

AdvanSix's May 20, 2016 Disclosure identified 48 valves (discovered during the third party audit and included in the company's CAP) that had not been inspected or monitored for one or more months as required under the periodic monitoring frequency provisions found in Appendix A, Part B. EPA's Summary Chart indicates a possible assessment of stipulated penalties in the amount of $100 per component per day, in accordance with Paragraph 58(b) of the Consent Decree.

EPA believes more clarification is needed on this Item No. 8. Our Summary Chart references a failure by AdvanSix to identify 48 valves. It therefore seems reasonable to conclude that the company failed to monitor them under any program. Since this failure was identified as a result of the third party audit under the terms and conditions of the Consent Decree, EPA views these components as Consent Decree required components. Further discussion may be needed to determine how long the components went unmonitored. However, our initial conclusion is that if AdvanSix failed to identify these valves, then it follows that the company never monitored them at all.

EPA requests that AdvanSix provide at least three (3) dates during the month of August in which you and company representatives will be available to meet here in Region III to discuss these issues in greater detail. My expectation is that VADEQ would also be in attendance at this meeting as well. Please contact me regarding these dates via email, or by telephone at the number indicated below, at your earliest opportunity. Thank you.

Sincerely,

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